People, space, and law in late medieval and early modern Britain and Ireland*

'In England, to all appearance, law very rapidly became territorial, and he was a West-Saxon who lived in Wessex.'[1]

Law is one instrument of government: a discourse of authority central to claiming, peopling, exploiting, and keeping spaces.[2] It is 'an arm of politics and politics was one of its arms'.[3] Historians have charted how law could be used to integrate a polity (Wales with England) or to change its social characteristics (the project to 'civilize' Ireland) or to mark out its separateness (the guarantee of Scots private law at the Union of 1707).[4] Since the era of the great Whig historians of the nineteenth century, law and history have diverged and British social historians have paid scant attention to law as an institutional basis for difference and something which shapes (and is shaped by) local 'manners', customs, and habits.[5] Yet law itself is of historical significance, not just a filter through which we perceive the people of the past, not an epiphenomenon of something else, and not a marginal curiosity: 'law matters'.[6] By recognizing that they have taken over much of the agenda of the old legal tradition, historians can add a 'legal turn' to the spatial one which they have begun to incorporate into their work.[7] A comparative approach that makes law part of both geography and society can shed fresh light on convergences and divergences in the historic experience of different parts of Britain and Ireland.

Both spatiality (the condition or character of a bounded territory) and space (a social product constituted by people's interactions), including 'the spaces of everyday life', have attracted recent interest.[8] Custom as local law and usage has been closely studied, notably by Andy Wood, to understand access to material and cultural resources.[9] W. G. Hoskins and M. W. Beresford wrote evocatively two generations ago of 'visible history' and Alexandra Walsham's analysis of the changing religious landscape of early modern Britain and Ireland has brought home the centrality of the manmade environment in constituting place.[10]

Together these scholars have expanded our knowledge of the literacies of landscape and the force of the English geographical imagination. Every English person (especially the poor) knew his or her place in a social-structural sense.[11] Within an English church, for example, seating mirrored both social status and landholding.[12] Yet the location of social selves remains under-researched and the importance of geographical awareness of the law is only beginning to be explored, notably in connection with poor relief and the parish.[13] However geographically mobile, knowing about space mattered to the English, because of the associated legal rights of inclusion and exclusion, obligation and entitlement. Rights were often much less mobile than people, so that pragmatic legal knowledge meant, for many purposes, being aware of 'law-in-space'.[14] Historians and historical geographers of the late medieval and early modern period have, nevertheless, barely touched on how the diverse legal systems in the component parts of the British Isles shaped or reflected geographical awareness, leaving this to a sub-set of legal geographers.[15] The few who have successfully brought out the significance of English attitudes to people and law in space are historians of colonization (like Patricia Seed, Hans Pawlisch, or the geographer William Smyth) more than of the metropolitan itself.[16]

This article compares the impact of the conceptualisation of jurisdiction on the relationship between people and space in late medieval and early modern Britain and Ireland. It goes beyond spatiality to explore the relative significance of territoriality. Geographer Robert Sack defines this as 'a spatial strategy to affect, influence, or control resources and people, by controlling an area'.[17] Early modern and modern historians, especially those of England, tend to think territorially about law, but for medievalists the opposite conception - 'personality of law' - is equally relevant.[18] F. W. Maitland called it '"personal law" … each man keeping wherever he might be the law to which he was born'.[19] Lawyer Sir Henry Maine had earlier seen this conception emerging from ideas of sovereignty over people, where individuals or groups 'based no claim of right upon the fact of territorial possession, and indeed attached no importance to it whatever'.[20] This article proposes that the idea of personality of law can be extended to help understand not only the acquisition and transfer of ethnic law by or to individuals on Europe's medieval frontiers, but also relations between law and people in early modern Britain and Ireland. Concepts like sovereignty are well covered by historians, but they tend to take for granted the place of

territoriality in framing rights and responsibilities. Currently fashionable transnational studies mostly assume that boundaries are fixed and important and that those which matter are political. Studying the histories of boundaries and law, their variant forms, limits, conjunctions, and juxtapositions provides essential context for understanding the contingent and sometimes contested emergence of modern territoriality.

This article is about variations in law-in-space, which is how 'situated legal practices … contribute to the spatialities of social life'.[21] It discusses mainly the functions and officials of administrative units (such as parish, manor, and barony), the extent and nature of jurisdictions connected to law and order (such as English coroners'), and rights in real property.[22] The aim is less to answer specific questions than to bring out fundamental geographical differences in configurations of law and people in space, which will help scholars to take a fresh look at a wide range of topics. This article brings together a number of spatial entities and different ways of relating to them. It seeks to nuance meanings of space, place, and territory, terms often used synonymously by historians.

The argument is that the English attached far clearer legal meaning to territory than did peoples elsewhere in the British Isles. Jurisdiction in space was particularly important for the English – one element constituting their society. Law configured, realised, and constituted space, creating opportunities for, and constraints on people.[23] The English understood much law geographically and, in doing so, shaped and reshaped the spatial awareness so deeply embedded in their cognitive structures. The point is not differences in the creation of space by social practice (important though that was in multiple locales of interaction) but divergent understandings of how territory mattered to those who inhabited it. The administrative geography of sharp, sometimes artificial jurisdictional boundaries heavily influenced conceptions in England.[24] The Scots, Welsh, and Irish, by contrast, had more person-focused laws and practices that emphasized the social over the spatial, general principles over specific applications: 'people-in-space', governed by law.[25]

England and its satellites lay under versions of common law, but it also had ecclesiastical, canon, and customary law, and equity, each implemented in separate courts prior to the nineteenth century. Different bodies of substantial law co-existed in Wales until the sixteenth century (the legacy of the laws of Hywel Dda). In Ireland and perhaps the Isle of Man too until the seventeenth century, brehon law overlapped with the law early English

colonizers had taken with them – and outside which they put the indigenous Irish, unless specifically granted English common law rights.[26] In contrast, Scots creatively adapted English, canon, Roman and Norse law to native Celtic and British traditions in developing a unitary legal system with equity at its core. Yet the distinctions we shall chart cannot be reduced to such bald differences. Anglo-Norman and Scotto-Norman law shared affinities from the twelfth century and England also received Roman law, especially in the early modern era. At the same time '[p]lace had geographical but also legal-institutional particularity, in common law not less than lex loci', because until the seventeenth century even English common law was 'local, fragmented and historically discontinuous'.[27] These variations arose from social and cultural priorities that were in turn the precipitates of past traditions.[28] The limitations of an interpretation based solely on types of law become clear when trying, as we shall, to unravel some of the regional variations in legality and its geography, within England. Thanks to its political and military history, and the enduring importance of kinship and lordship to its society, the north of England represents a distinctive version of English geo-legal traditions: government and society were organized largely around who owned what.[29] Along with Wales, this area shows a peculiar link between territory, institutions, and people, compared with the English heartland.

I

CIVIL PARISHES

Historians of England have recently begun to give law-in-space close attention, especially local legalities. Chris Tomlins has emphasized how much law was rooted in the specificities of place, which created a need to identify and assert local customs and rights at the level of the manor and parish.[30] This article therefore begins with the parish as the lowest unit of English community life and local government, comparing it with its equivalents elsewhere in Britain and Ireland. Rogation Week processions are a useful starting point when understanding spatial awareness, because they are so familiar to historians of early modern England. Conducted to assert parish boundaries, they were part of post-Easter English ecclesiastical life from at least the thirteenth century, though not officially until an injunction of 1559.[31] By the early seventeenth century (at least in southern England) they seem to have been a routine way of marking community identity, rather than an occasional administrative utility associated with religious and civil functions.[32]

Rogationtide perambulations are less familiar to those who study other parts of Britain and Ireland. In medieval Scotland Rogation Sunday was important as worship in supplication for the harvest, without any perambulation. There are records of public parochial processions in the fifteenth-century, but they are few. Parish perambulations after the Reformation were almost always about the location of churches and their accessibility to the congregation; they were less about boundaries than distances.[33] Most perambulations were organized judicially, and held intermittently for specific secular, probative purposes (in connection with land disputes between individuals or as a ritual way of asserting privilege, authority, and identity in times of change), rather than being annual, popular (if sometimes hierarchical), neighbourly, and mnemonic church routines.[34] In a rural context the boundaries established were for the benefit of the lord and the king, and seem (when first visible in the late twelfth and thirteenth centuries) to point to a change in perceptions and practices of Scottish lordship.[35] Lands thereafter are usually described in rather general terms, even in charters, because their limits were clearly known.[36] Yet many other bounds in Scotland were far from so ‘simple and absolute’ and, as we shall see, their practical significance could be limited.[37]

Most recorded examples of communal perambulations in early modern Scotland are from towns rather than rural parishes or baronies, notably the 'Ridings' of major burghs in the early modern Borders and Central Lowlands. In these municipal demarcations, the burgh council or its representatives rode on horseback and (in late-sixteenth- and early-seventeenth-century Edinburgh at least) the event took place at Halloween.[38] Disputes over urban 'commonties', land available to citizens for grazing, are well-documented from the twelfth to the nineteenth century and burghs were also keen to preserve marketing privileges and the right to make levies, which required a precise delineation of boundaries.[39] Importantly, the word riding described a settlement or outcome in Scotland, whereas a perambulation in England was an iterative process in pursuit of a broader goal. In Ireland too rituals to delineate boundaries were rare prior to the nineteenth century; ridings or perambulations were again most commonly associated with towns. Assertions of communal identity, for their part, tended to be social rather than spatial, centring around specific sites and saints on 'pattern' (patron) days.[40] Basic distinctions in the importance of space, and ways of demarcating it, are immediately apparent, in different parts of Britain and Ireland.

English perambulations usually marked out the parish, the most important civil territory from the Middle Ages until weakened by nineteenth-century administrative reforms. The sixteenth century saw an important expansion in its role when the Tudors formally incorporated it into poor-rate collection. Building on existing parish-based benevolence, royal injunctions and a statute of 1552 (5 & 6 Ed. VI, c. 2) created a novel framework for parishes to raise and store funds, acquired from the wealthier parishioners after Sunday services, for regular distribution in the following week. Late Elizabethan legislation made it obligatory to raise money through taxation on inhabitants occupying land in the parish. In 1552 collectors of the poor (from 1598 overseers under the supervision of Justices of the Peace) took over the charitable functions formerly performed by churchwardens.[41] Officials like these and (earlier) sheriffs, coroners, and Justices of the Peace populated and personified England's spatial entities. Poor relief was only one civil responsibility the English crown laid on parishes, the others being maintenance of highways and bridges, local tax collection, recording baptisms, marriages, and burials, policing, and providing men for the militia. The basis of direct secular taxes more generally was also geographical. From 1334 the crown imposed fixed payments on localities for raising Lay

Subsidies (fifteenth and tenth), using the vill or hundred (a district between vills and the county) where a payer was normally resident, rather than on the individual himself; similarly Domesday had been an assessment in hides for each individual estate and later imposts like the hearth tax were also collected by geographical area.[42]

Tudor legislators, who systematized the medieval parish's role, took as their model the small, nucleated unit of the densely settled south-east, where parish and vill often coincided.[43] Instead, secular townships or constablewicks frequently performed these functions in the north, before becoming civil parishes under Victorian reorganization. Units of administration were more mutable in the north, contingent on purpose rather than adhering to a uniform association between (for example) parish and poor law; in some areas the manor or hamlet took on civil functions that the parish performed in the south and across the north lordship provided an important administrative framework.[44] The north and west of England had different relationships between settlement and the boundaries of local administrative units, the result of an uneasy infliction of national administrative paradigms (parish and chapelries for ecclesiastical purposes, and townships for civil purposes) on societies dominated by lordship.[45] Different socio-economic configurations, notably pervasive intercommoning arrangements, both reflected and contributed to distinctive attitudes to space in this region.[46] Even within England, the image that historians have of the parish as a simple, recognizable, and important unit needs qualification. Its varying significance points to regional differences in attitudes towards people and space.

The significance of the civil parish was less still in Wales, despite the influence of English law on Cyfraith Hywel from the 1530s. Large parishes (just 560 in a country one-sixth the size of England, which had roughly 10,000 parishes) combined with dispersed settlement (tyddynod) and different priorities in appointing office-holders and administering poor relief meant that parochial organisation in Wales was subtly different from south-east England. Boundaries too lacked their neatness and Welsh parishes remained inchoate until the Victorian age.[47] Other territorial units within Wales were comparably weak until quite late, in terms of the English heartland. Not until the time of Henry VIII were shires and the commission of the peace fully instituted in Wales. Henry also gave the palatinate of Chester its first JPs and ended the exemptions of both areas from Lay Subsidies.[48]

Scotland's civil parishes had even more limited roles than Wales's prior to the nineteenth century. Scottish parishes were mapped onto existing landholding units, replicating contemporary patterns of lordship that dated from at least the thirteenth century. Most early churches were proprietary – built, endowed, and controlled by landowners to serve their estates – and, even when revenues and appointments were appropriated by monasteries in the late Middle Ages, many remained wholly or partly subject to baronial powers.[49] Living on the land in Scotland mostly meant being on an estate under a lord and this gave peasants much more of their persona than did the parish, which in any case often coincided closely with units of local lordship.[50] The functional areas for most rural dwellers were those landowners created: dabhach (English 'davoch'; 'a unit that was imposed upon the landscape to assert "extensive lordship", probably in relation to both economic and human resources' in the Middle Ages and perhaps before[51]), 'ferm toun' (a farming township or group of dwellings associated with a landholding) and 'officiary' (a group of townships administered by a ground officer) together comprising baronies. These divisions were not administratively significant beyond the internal management of the estate, though a group of (around eight) dabhaichean formed parishes and the barony was the unit for a wide range of civil, military, and judicial purposes in the late Middle Ages.[52] The shire in Scotland was not as cohesive as in England until the seventeenth century, when increasingly regular royal taxation and the formalization of Commissioners of Supply (1667) gave it more substance as a 'county community'.[53]

Central government tried to integrate parishes into structures of governance. Between 1556 and 1669 the Scottish parliament passed various acts to give parishes more English-style responsibilities.[54] An example is the act of 1617 for recording titles to land in the General Register of Sasines, though it is clear that parish officers had nothing to do with the processes of registration and, more broadly, few of the initiatives stuck.[55] Instead, the post-Reformation Kirk independently took on certain functions at a parish level, which it regarded as an extension of its legitimate business, such as poor relief, social control, and social improvement (notably education). Until late on, the parish quoad omnia (dealing with all matters) was nevertheless subordinated to that quoad sacra: a unit of ecclesiastical administration, finance, and discipline.[56] Parish clergy in post-1560 Scotland look a bit like state functionaries, but they were purely voluntary agents in secular causes they thought

worthwhile. For example, most flatly refused to have anything to do with administering the first census of British population in 1801, though it used the parish as the basis of enumeration. They nevertheless supplied reports for Sir John Sinclair's parish-based Statistical Account of Scotland during the 1790s.[57] The Kirk eventually created, in 'the parish state' of the eighteenth and early nineteenth centuries, an important territorial focus in a country where other such associations remained manifestly less significant than in England.[58] Like the universal church before it, the Kirk developed a territorial organization and became an element within governance. As in England, the parish had been formalised in the twelfth century around the obligation to pay 'teinds' or tithes to a particular church.[59] Yet the Kirk was not 'statelike' because it achieved its goals through the exercise of moral authority over people, rather than by controlling areas. We might even see it as supra-territorial, just as secular rulers of the Middle Ages treated the jurisdiction of the universal church as directly opposed to the principle of territorial dominion, because it implemented the living law of all western Christendom.[60]

Scottish legislators treated the parish as a unit of local government, though more as the successor of the barony; the relationship of both bodies with central authority, whether secular government or church hierarchy, had always been locally variable.[61] Responsibility for the erection and maintenance of ecclesiastical buildings belonged not to all parishioners (who in Rngland had financial responsibility for the nave and churchyard), but to the parish's 'heritors': those who owned land or buildings above a certain annual value within its bounds, with the obligation to support the parish church and minister. Heritors also wanted to decide poor relief on the basis of personal association, targeting doles at their own dependants. Until the eighteenth century it was far from clear whether responsibility for collection and distribution of benevolence lay with heritors or Kirk Sessions.[62] In short, the experience of belonging to a Scottish parish was quite different from what was usual in England, because what happened within it had less civil significance and because social relationships between its inhabitants were not the same.

Delving further into poor relief shows this still more clearly and also reinforces the importance of personal over territorial concepts and practices in Scottish society. From Elizabethan times the English and Welsh had settlement and poor laws, with entitlements clarified in 1662. Landlords who tried wholesale eviction there could be obliged to resettle

those who had been moved; people who went to another parish could be shipped back to where they had settlement or their home parish could offer (at discretion) non-resident relief; JPs acted as enforcers of the rights of the poor.[63] In contrast, Scottish lords were effectively answerable to no higher authority and, until the 1840s, they could evict inhabitants (if not 'remove' them in the English sense) without worrying about the implications of their actions, which became someone else's problem – notably the major towns of the early nineteenth century. Withholding poor relief could even be a tactic to compel migration from an estate.[64]

Other divergences in the practices of poor relief show different conceptions of rights in space. Notorious examples, where constables and overseers in England conveyed pregnant, sick, or dying paupers across boundaries to avoid a charge on the parish, are all but absent from Scotland before the nineteenth century.[65] This was not because the Scots were more humane: Victorian critics of evictions decried the apparent lack of compassion on the part of landlords. Instead linear boundaries mattered less to Scottish practices of poor relief and entitlements were vaguer until the eighteenth or even nineteenth century.[66] Determined not by a precise settlement, relief usually came from the place of a pauper's 'most common resort', though the Kirk adopted a wide-ranging stance, giving to any deserving Christians who could be construed as 'objects of charity', wherever they originated and wherever they lived.[67] The Kirk's priority was different from that of landowners, in wanting to treat all the needy alike, but it was equally non-territorial. Legislators and givers alike discriminated against vagrants on the grounds of morality as indicated by lifestyle, rather than solely on residence.[68]

Settlement laws are a good example of how, particularly in south and east England, people conceived space primarily in static terms, as a way of structuring relationships by inclusion and exclusion. Elsewhere in the British Isles space had 'transformational and generative' characteristics.[69] Ireland had no formal poor law until 1838 and even that statute did not mention settlement.[70] The institutions sustaining community at a local level across Europe – such as parishes, manors, estates, and counties – existed in Ireland and grew stronger in the late eighteenth and nineteenth century.[71] Yet in the late medieval and early modern period parishes and manors in Ireland almost expressed Englishness. The 15 most Gaelicized dioceses contained a quarter of all Irish parishes; the 10 most Anglicized

ones had half the total.[72] Early parishes seem to have been based (as in Scotland) on secular landholdings. Ireland's 2,400 late-medieval parishes may never have performed many civil functions because its 60,000 'townlands' (the smallest recognised administrative division, varying greatly in size) and 270 baronies were much more important.[73] Links between ecclesiastical and secular powers were persistently weak in Ireland, except perhaps in the main towns.[74] For a time during the seventeenth and eighteenth century, land reallocation and the dual Anglican-Catholic structure spatially disinherited the Irish parish and further weakened its importance.[75]

II

LAW AND ORDER

The varying significance of the civil parish shows the diverse ways in which bonds between people, law, and space could be constituted in different parts of Britain and Ireland. Early modern England may have had as many as manors as parishes (often with manor courts), roughly 300 ecclesiastical courts, 180 (incorporated) borough courts, and so on.[76] In contrast, Scotland had fewer jurisdictional entities than England, perhaps one-tenth to one-eighth the English total in a country three-fifths the size and with one-fifth the population. For example, it had just over 900 parishes c.1300 and just over 1,000 in the early eighteenth century.[77] Edinburgh, the largest town in Scotland with about 15,000 inhabitants, remained a single parish until divided into four as late as 1583; most Scottish towns were single parishes until much later.[78] Prior to 1560 there were roughly 1,040 baronies (of which 54 were regalities, covering half of Scotland's surface area).[79] Tenurial geography was simpler too, landholdings generally compact and consolidated, and there were fewer layers of property rights.

Most legal business in England took place in the many thousands of local courts – like those of the manor - whose jurisdiction was limited by geography as well as classes of action, codes of law, and plaintiffs.[80] The apparent simplicity of jurisdictions on the ground, registered in a charter, or ones in action, recorded as court proceedings, belies their cognitive complexity for those who used them. Many English jurisdictions were fragmented, the result of centuries of royal grants seemingly made without heed to previous awards, and were part of a broader conception that Maitland called the '"notional movability" of the land'.[81] Manor and vill were seldom coterminous and jurisdictions could be in, but not of other territorial entities.[82] Honours (large lordships centring on castles) and multi-manorial vills tended not to be compact spatial units, but dispersed entities where the geographical, mental, and legal map of rights was complex, and where tenants might hold simultaneously from multiple lords within a complex hierarchy of dependent tenures.[83] Liberties, some dating from before 1066, complicated and sometimes compromised legal processes until at least the seventeenth century.[84] Roughly half the towns, villages, and hamlets of Yorkshire, listed in a detailed guidebook of 1792, lay within liberties exempt from the sheriff's jurisdiction.[85]

Dispersed landholdings and jurisdictions may have militated against some forms of local identity but, on occasions when boundaries and their associated legalities became contested, they finely honed spatial awareness.[86] Only very slowly, over centuries, was a complex network of overlapping (and often competing) jurisdictions disentangled, though the existence of detachment was not incompatible with unifying and systematizing forces, such as supervision of coroners by assize judges or the nationally uniform remit of JPs.[87] In another force behind integration, growing recourse to the Westminster courts in the sixteenth century may have helped solidify spatial entities (just as it helped to standardize law), providing an arena for people to realise legally bounded spaces, which had meaning for them in their day-to-day lives.[88]

Against this backdrop, law enforcement in much of England depended on deploying certain geographical concepts, with spatially rooted and restricted officials answerable to crown and people. At the heart of late-medieval peacekeeping was the view of frankpledge, a system where a group of men comprising a 'tithing' (a subdivision of a hundred) had to capture offenders and present them to the authorities. More broadly, the crown solicited reports of crime from panels of locals, for presentation to itinerant royal justices. Under the tithing system, all males over the age of 12 in a locality of the south of England were answerable for unreported felonies and for not presenting indicted criminals.[89] After 1194 this included presenting suspicious deaths to coroners. Coroners issued a warrant to local constables to list potential jurors and the groups of 10-24 men they gathered to constitute inquests were usually close neighbours of the deceased. Coroners held inquests in private houses or public buildings, such as taverns or church porches, in the immediate vicinity of where a body was found - again affirming locality.[90] The location of a body dictated which official presided over its view (coroners and their juries had to inspect the corpse in person) and, if it involved a forfeiture because the death was felonious, the inquest considered the goods that its members could see.[91] Elected by the county court, 'general' coroners (rather than 'special' or franchisal ones, who comprised a fifth of all coroners) also had to be resident within their jurisdictions.

English petty constables, drawn from the inhabitants of a manor or parish, resembled coroners in having a duty to represent the local communities in which they lived, as well as performing their primary function as preservers of the king's peace. Both officials

exemplify the enduring and characteristically English interaction between prescribed forms and public offices on the one hand, and local traditions and socio-political alignments on the other.[92] By no later than the fifteenth century, parish constables rather than tithing-men had become the identifiers and pursuers of criminals, while parish boundaries had come to mark the practical limits of law enforcement until the eighteenth century.[93] The Tudors transformed constables from executive legal officers of the manor into local parish administrators for JPs, responsible for a range of important tasks – part of a shift from ascending to descending practices of government.[94]

The neat geography and uniform chain of command implied by tithings, constables, and coroners did not obtain everywhere in England. There was no view of frankpledge (or murder fine) north of the Humber (where hundreds were known as wapentakes or wards) or on the Welsh marches (where the main units were the tref and cantref).[95] Serjeants of the peace mattered more in these areas in the late Middle Ages, as did lordship, which was 'fairly undiluted … by English standards'.[96] The importance in the north of England (and in Scotland and Ireland) of holding lords accountable for the actions of their tenants and other followers, through sureties, bonds, or 'bands of manrent', indicates the different priorities in peace-keeping there, which stressed the personal over the territorial.[97] Lordship in these latter zones was what Thomas Bisson terms 'a mode of personal power over human beings'.[98] Obligations were nevertheless mutual and a remission for past crimes given to a Scottish lord also covered subordinates, with whom he had entered into a 'general band'.[99] Personal intervention and support were integral to justice until at least the seventeenth century. Steven Ellis offers similar findings for Ireland, where clientship (céilsine) agreements also stressed reciprocities; they lasted for the life of the lord. Gaelic lordship was about men more than land, lords measuring their power by their ability to retain tenants and followers.[100] They used lineage and kinship ties potentially to provide island-wide alliances and networks.[101] Practical law enforcement over much of Britain and Ireland was based on social relationships, which were only incidentally linked with space. Where a person lived was indicative, but not constitutive of allegiance.

The Scottish way of investigating sudden or suspicious death was quite different from how English coroners worked and it neatly illustrates different conceptions of law, people, and space. The magistrate or 'procurator fiscal' investigating a death had the closest

connection to its circumstances and was most closely familiar with the person in life, the location of the body being incidental to jurisdiction; inquiries were at discretion and took place in private. Coroners or 'crowners' in Scotland were purely crown functionaries who secured persons and goods for justice ayres (sic). Constables too (only introduced in Jacobean times) were direct appointees of magistrates, without any representative quality; their significance was administrative rather than judicial.[102] Scottish coroners did not have to reside in their jurisdiction. In Ireland, meanwhile, early coroners do not seem to have recorded the tithing or townland responsible for fugitive felons, perhaps because of the impossibility of getting kin to own up to guilt. Indeed Irish coroners may not even have been very active until the eighteenth or nineteenth century.[103] Enforcing law and order in Ireland mostly meant activating personal ties. Here, in Scotland, and perhaps also in Wales a participatory tradition in policing was either poorly developed or imperfectly controlled by central authority.[104]

The Scottish practice of 'repledging' or 'replegiation' further illustrates the centrality of the personal to justice in north and west Britain. Repledging meant that a suitably franchised lord could remove to his own court, the case of an offence allegedly committed elsewhere, by a person who was his dependant or who normally lived within his jurisdiction. The locus of the crime was irrelevant.[105] Repledging did not abrogate from the king's law – the lord had to lodge a surety or culreach that the sovereign's justice would be done - but simply moved the accused to the judgement of a public court in private hands. Increasingly restricted from the time of James VI and virtually ineffective after 1672, repledging nevertheless illustrates how medieval and early modern Scots law prioritized the personal over the spatial, in its own version of a legal landscape of exceptions. Each jurisdictional grant to a baron was different, vitiating any standard administrative relationship with the crown. Scotland's kings assigned specifically defined jurisdictions to individuals, which were not necessarily attached to land and were conceived as quite different from it (being indivisible, for example).[106] In England the association was not the same - it was the land-grant that mattered – and lords could hold courts for their tenants by prescription, because some jurisdictional rights were seen as inherent in the land.[107]

The administration of law and order reflected the peculiarities of Scottish feudalism, which gave more importance to jurisdiction than tenure.[108] A superior could compel a

subordinate to attend his courts and be subject to their judgments.[109] People who lived in a jurisdiction might therefore find themselves regulated by its controller, whether burgh magistrates or an individual lord, even when formally 'free' and wishing to engage in activities outside it. For example, in 1661 the baron court of Stitchill, on the border between Berwickshire and Roxburghshire, fined a couple for buying (more expensive) bread for a 'penny bridal' (a contributory wedding festivity) in the burgh market at Kelso, rather than grinding the 'bridal wheat' at the mill to which they were 'thirled' (bound). The court ordered not only that 'all Makers of Common Bridells, also Ail Brewers' should grind the wheat at the baronial mill, but also that the bridal be held in the bride's parish rather than the groom's.[110]

Personality of law might even affect treatment of visitors to Scotland. Into the seventeenth century, senior Scottish courts sometimes tried to apply English law to Englishmen in Scotland, and they might also tailor justice to the norms of other quasi-foreign groups like gypsies; more broadly, the law recognised the importance of foreigners and gave them protection and latitude.[111] A similar philosophy seems to have underlain the treatment of criminal accusations against outsiders in medieval Ireland.[112] The power of the personal is clear in other matters criminal. Until the sixteenth or even seventeenth century, the systems of justice in north and west Britain, and in Ireland, allowed a place for lords and kin to act, which English law had long excluded.[113] Appeal (accusation) of felony is a prominent example of personalized conceptions of the law that had largely gone from England by 1300.[114] Another is trial by ordeal, resolving a private dispute between accuser and accused; arguably trial by combat remains an option in Scots law to this day, when other proofs are not available.[115] A third is feuding, not eradicated from Wales until the sixteenth century and Scotland until the seventeenth century.[116] The very idea of public offence or felony seems to have been subordinated to that of individual civil injury or tort in Scotland (delict), Wales (cam or anghyfraith), and Ireland – and perhaps also in the north of England – until at least the sixteenth century.[117] These examples demonstrate the dominance of distributive over commutative conceptions of justice in the north and west of the British Isles.[118]

Upon conviction, wronged Scots could resort to remedy based on private compensation (called cro, colpindach, or, from 1425, 'assythment'; Welsh galanas, Irish

éraic or éiric, Anglo-Saxon were) alongside or in place of other punishment. None of the societies of north and west Britain and Ireland conceived liability to pay criminal compensation in exclusively individual terms, but as a burden of reparation to be shared among kindred or affiliation; the conception was personal and not linked to space.[119] As John Baker puts it, 'Early Welsh law was not a law of counties, hundreds and feudal lords, but of tribes and families and chieftains.'[120] Only in the sixteenth century, with the introduction of the Great Sessions in Wales, did the principality become fully assimilated with English common law, and the polity and administration more strongly territorialized. Yet long after, in the eighteenth century, Welsh approaches to criminality retained important elements of earlier traditions.[121]

III

PROPERTY

English constables' jurisdictions were geographically limited and coroners' juries dealt with bodies and assets that lay within their view. Simply by being within a territory, people and things became juridical objects in England. Location of goods and of matters depending was also paramount in the jurisdiction of both franchisal and non-franchisal English courts. For example, the Exchequer of Chester's jurisdiction was legitimate only if the matter in dispute and the residence of the parties was within the county palatine.[122] Similar rules applied to the Chancery and Exchequer of Durham and central courts seldom heard suits from the northern palatinates until well into Tudor times.[123] At the same time, location of assets determined the competency of probate courts. An English executor was supposed to use the court of the archdeacon within whose jurisdiction goods and chattels lay; dealing with property in more than one archdeaconry meant going to a diocesan court, in more than one diocese to one of the two provincial courts.[124] Jurisdictions in England had an important territorial component. In contrast, the Roman law maxim mobilia sequuntur personam obtained in Scots law. Executors (or any civil litigants) could pick whichever of the 22 post-Reformation regional or 'particular' Commissary Courts best suited them, when confirming executorship over assets and liabilities post mortem, wherever movables were found. Executors had only to use the national jurisdiction, exercised by the Commissaries of Edinburgh, for particularly valuable estates, or (the sole spatial reservation) for confirmations of Scots who died abroad.[125]

Treatment of real property – sovereign territory and private land – also differed across Britain and Ireland. Put simply, government was a way of organizing people-in-space in late medieval and early modern Scotland, Ireland, and Wales. In England, by contrast, legal geography shaped both government and the experience of being governed. Examples of the attempt to impose one practice on the other come from the Anglo-Scottish Borders. Alliances and enmities between 'reiver' (robber or raider) families crossed linear boundaries and effectively ignored both governments prior to mid-sixteenth-century agreements about the 'debatable lands' and then the Union of 1603. This could be seen as a simple failure to rule, by constitutionalists with a fixed definition of boundaries – like the English diplomats, who pushed hardest for a formal division and who alone produced a map for the

negotiations.[126] For the different parties involved, approaches to the debatable lands reflected contested views of the significance of law-in-space, and of what boundaries should mean.[127] This divergence and the existence of a human rather than physical frontier created an ideational as well as a practical threat to states as 'bordered power-container[s]'.[128] It explains why monarchs of England, Scotland, and Britain tried with such mixed success to marry specific marcher laws with regions, whose inhabitants conceptualised space more openly.

Given the importance of territory to the Anglo-French, it is not surprising that, from Domesday (closely concerned with laying burdens on the land) through the plantation of Ireland to their worldwide empire, they measured and mapped what they wanted to comprehend and control.[129] Survey-based mapping, of the kind deployed by the mid-sixteenth-century English diplomats, was a common tool in contemporary English land litigation. Interested parties or local commissioners drew up the necessary maps until late in the sixteenth century, when litigants employed professional surveyors more widely.[130] Though less important than debt and credit, much contemporary litigation in England was about boundaries.[131]

More than just mapping, knowing the spatially particular was a characteristically English way of understanding the geographical whole. In some sections of his Perambulation (1576), William Lambarde described a uniform and centralized county and nation (taking a geographical stance), but in others he relished the diverse administrative arrangements of the constituent parts of Kent (chorography), emphasizing 'the particularities of place' and implying 'a decentralized political landscape.'[132] Lambarde's main interest was English law (ancient and modern) and, more broadly, chorographers, like lawyers, tried to conceptualize and control nature through taxonomic knowledge of history, landscape, law, and local genealogies.[133] A sense of place was their operative factor. Inspired, like others, by Lambarde, John Stowe's Survey (1598) also focused on the dispersed histories, topographies, and legal and administrative privileges of the individual components of London, partitioning the city into discrete - sometimes minute - geographical and jurisdictional units.[134]

The equivalent descriptive (and map-making) tradition in sixteenth- and seventeenth-century Scotland was more broadly geographical, concerned with the whole

nation.[135] Maps seldom appeared in Scottish civil cases about boundaries and land rights prior to the eighteenth century.[136] Ireland too was different. The English surveyed and commodified Irish land prior to their major assimilation projects in the late sixteenth and early seventeenth century.[137] Changes in the representational practices of mapmaking constituted political transformation in Ireland. The process of 'settling' Ireland revealed a difference in social organization between the colony and the metropolitan, but it also highlighted a damaging divergence between conceptions of law-in-space and people-in-space, which paralleled differences in other areas of thought and behaviour.[138] The English legal system formally imposed in Ireland in the early seventeenth century (co-ordinated by the Four Courts in Dublin) struggled to develop proper roots partly because of the geographical assumptions that underlay it, alien to the spatial organizations and cultural perceptions of Ireland's indigenous peoples.[139] The Irish way of conceptualizing territory was verbal and subjective rather than graphic and perspectival; they tended to refer to territories by the names of the peoples inhabiting them, rather than by land or boundary marks.[140]

From an English viewpoint, March, Border, and Irish policies made perfect sense because many legal rights in the English heartland belonged to bounded spaces marked by physical objects and increasingly expressed in maps and diagrams.[141] On the ground, material symbols delineated law-in-space, turning boundaries into barriers. Patricia Seed notes that using houses or boundary markers to signify ownership or establish title to land was unique to English law. Other European legal systems needed either formal permission or written records to confirm title.[142] This reflected English appreciation of the potency of legal spaces - specifically the artefacts that marked them in the landscape - which helped to inform their ideas and practices of possession. English transfers of estate in land (livery (delivery) of seisin) involved the feoffor, the feoffee, and their witnesses standing on the land itself, though it was also acceptable simply to be able to see the holding. As well as the feoffee accepting token(s) of the conveyance, the feoffor and his dependants had physically and symbolically to leave the land.[143] This was the normal means of transfer in England from Norman until Tudor times, remaining legal for long after.[144] It indicated intention to occupy or vacate a landholding and an actual presence on or departure from it.

English land law concerned itself with deciding superior claim to occupation: physical possession meant legal title, occupation equalled ownership, fact effectively created right. Superficially similar to English rites of transfer, Scottish 'sasines' had important formal and symbolic acts attached to them, notably the handing over of earth, stone, or some other token – though this could be done anywhere. The essence of the transfer was, nevertheless, quite different: personal surrender and acceptance of the ultimate right of ownership (separate from possession), usually written down from an early date and officially registered from 1617.[145] 'Property' in England was a possession (an interest allowing access to spatial privilege), in Scotland a right.[146]

The English concept of possession gave tenants and lodgers greater rights, including those of property, than their Scottish equivalents.[147] Leases in England were 'a species of holding, but in Scotland are merely accounted a right of occupancy, and not of property'.[148] Thus all kinds of English possessors regarded property boundaries as significant, including domestic thresholds. We can see this in the active English use of spatial concepts when implementing laws about debt, encapsulated in the phrase (dating from no later than the time of Henry VII): 'everyman's house is his castle' (i.e. homes were 'places of residence, repose and refuge').[149] In contrast, Scottish debtors could not 'keep house' - that is, be immune from arrest for debt by locking their front door, as the English could do – and Scotland's legal officers could go (peacefully) anywhere, except recognised ecclesiastical sanctuaries and royal 'girths', to seize those denounced as rebels.[150] Even these places of territorial immunity mostly fell into disuse after the Scottish Reformation.[151] Domestic boundaries in Scotland were more porous than in England. Until the eighteenth century, travellers noted, many Scots did not use locks on their house doors. Scots started fitting and using locks to emulate English fashion, not because of any change in trust, material culture, or knowledge of Scots law.[152] Until the nineteenth century the doors of poorer-quality houses in Ireland were made of wicker and straw, difficult to secure unless inhabitants were inside.[153] In Wales too entry into the house was 'easy, informal and unrestricted'.[154] The proffered image of the generous house in medieval Welsh poetry was one without lock and key, though this does not deny concern with security or a sense of domestic privacy here or in Scotland or Ireland.[155]

Crossing a threshold and so infringing possession troubled the English. Their law of 'simple' trespass (in this case unauthorized going on the land of another – the word trespass had a far more extensive delictual usage there) emphasized entering a space or breaching a perimeter and thus violating a right (accompanied in formal charges by legally constitutive terms of art like 'vi et armis et contra pacem regis').[156] It was actionable in itself, because of the presumption that owners wanted exclusive use. Breaking a boundary in England was a relational statement, replete with symbolic as well as legal and material meaning.[157] In contrast, Scots law usually treated unapproved entry as a civil wrong, requiring a specific use or misuse (or intention so to use) in order to be actionable. Until the nineteenth century, much land in the Highlands lacked a definite designation or application and owners did not enforce their right to exclusivity, allowing passing cattle merchants or drovers stances to pasture their herds.[158]

People could trespass, in the English sense, to make a point. Enclosures by hedges, fences, or walls (necessary to consolidate and reallocate land in England) had particular psychic resonances for the English because they disrupted spaces and altered memory of place, as well as redefining property rights. Reordering land sometimes caused riots or provoked lower key, but still politically significant 'acts of use'.[159] We might note in passing that this is a further example in England of the disputed nature of certain spaces and the boundary symbols which marked them, and of the importance of visual cues as points of reference. In England boundaries were often complex and contested, and always significant. Alterations to the face of the land were, in contrast, largely lost on the Scots, for whom boundaries were either clear and simple or vague and of lesser importance. Function, suitability, meaning, and access mattered more to them than appearance. They fused the social and the natural, the personal and the material in distinctive ways.[160] The only unambiguous farming division over much of upland Scotland, until enclosure and improvement took off in the eighteenth century, was the 'head-dyke', a simple wall or bank which marked out hill pasture from managed land.[161] And until the Highland clearances of the nineteenth century, Scots rioted much more about food, taxes, militias, troops, politics, and religion, than land-use.[162]

Highlanders were particularly attached to place, but in a geographically vague and legally amorphous way, summed up by the Gaelic word duthchas ('heritage'). This meant

that ‘tacksmen’ (the tenant élite who held formal leases) affiliated with a lord expected a customary right to the hereditary possession of their land. This legitimating sense of ‘right’ was ill-defined and, because it appealed to fictive kinship and emotion, it was difficult to specify.[163] In practice, lesser tenants and sub-tenants wanted to stay on an estate rather than occupy a particular piece of land because they usually enjoyed only a broadly defined share of a farm, rather than a specific holding; leases (if such they had) were usually short and relocation of tenants or reallocation of land was a common experience. Scottish peasants could feel (or claim, tactically) attachment to land in general and to a landowner, but not to a precise piece of property.

Highland conceptions of land rights have parallels in Ireland, where brehon law allocated temporary and seemingly uncertain shares in land to members of a lineage. This adaptable system was only very slowly and imperfectly replaced, by the more precise certainties of English common-law ‘individualism’ and a more Frankish version of feudalism, from the twelfth century onwards. Seventeenth-century reforms more directly challenged indigenous Irish practices.[164] The seeming indeterminacy of holding real property reflected the fluidity of Irish social structures, decision making, and conceptions of space, which English visitors consistently misread.[165] The contractual personal relationship that constituted early Irish clientship worked primarily through grants of livestock. Land in Ireland could be viewed as a communal or familial resource rather than merely another personal asset. This meant that, until the nineteenth century, tenants sub-divided and sub-let holdings to kin or strangers, whatever landlords said.[166] For many Irish people, land was not a free-market commodity that owners could rent to the highest bidder, but a resource subject to firm moral claims. Edmund Spenser, an Elizabethan administrator in Ireland, felt these comprised ‘a certain rule of right unwritten’, while for a Royal Commission of 1870, struggling to reconcile two different accounts of right and space, it was ‘a living tradition of possessory right, such as belonged, in the more primitive eyes of society, to the status of a man who tilled the soil’.[167]

IV

PEOPLE-IN-SPACE AND LAW-IN-SPACE

Scots, Welsh, Irish, and English grounded themselves in the landscape. The spaces they perceived, conceived, and lived in created layers of experience that turned them into culturally meaningful places.[168] Associations and memories besides law embedded all the peoples of Britain and Ireland in locality, establishing social and moral as well as physical boundaries.[169] For them all, landscape was 'a dense and complex system of signs and symbols that can be decoded and deciphered'.[170] In short, there were many species of spaces, and ways of connecting with them and between them.[171] Robert Dodgshon has argued, for example, that the symbolic order within Scottish land divisions was part of a mind-set that affected everyday life.[172] Building on this insight, R. J. Morris writes of a pre-modern 'idea of space in which culture and identity was secure and localised. Space was bounded and prescriptive.'[173] Spaces gave and took meanings. How different social groups related to them and how this changed over time is an avenue for future research. One thing is clear: the Scots did not construe or 'live' geography in the same way as the English, partly because their laws were not the same, but more because they related to law and space differently.

Function and social practice constituted geography across Britain, but a territory's legal status added an important dimension, especially in the south and east of England where law was legible in space. Representations of space were part of the constitution of the social order; they were the result of a human process, involving economy, culture, politics, and social interactions, and they expressed power relations. The English controlled people by organizing space, which they reconstructed or classified 'in a projective or Euclidean' way, and onto which they mapped law.[174] Their mental and physical landscape comprised a series of legally bounded spaces. In contrast, the inhabitants of other parts of Britain and Ireland organized territory, until the seventeenth century or later, by controlling people, investing space primarily with symbolic meaning from life-experience.[175] In these latter regions persisted a personal as much as a territorial conception of law and a rather neutral one of space.[176] These approaches also applied in important respects to the north of England. Dominion over people mattered in north and west Britain and in Ireland during the late Middle Ages and early modern period, over space and objects elsewhere. Bonds

between people-in-space were the most important connections within the societies of the former, whereas links between people and space, embodied in law, were also vitally important in the latter. Law mattered everywhere in Britain and Ireland, but how and why differed greatly.

It may be tempting to locate the origins of the differences we have charted in early modern developments. Tudor legal and administrative changes may indeed have solidified jurisdictions and awareness alike, creating clearly regulated grids. Meanwhile maps and artificial markers replaced memories and natural features when delineating boundaries. The singularities of manor, parish, township, and borough lent places in England their particular identities, cemented by chorography and then the forceful emergence of antiquarianism in the eighteenth century. Yet it is hard to escape the conclusion that these technological and intellectual changes (and the impact of the litigation explosion of the sixteenth and seventeenth centuries) consolidated existing English understandings of law-in-space, rather than constituting new departures. Whatever the monumental changes of the twelfth century, law was as much a part of the personality of the Anglo-Saxon state as the Tudor one.[177] Medieval Scotland, meanwhile, embraced the law of the church more extensively than did England, and it selectively received Roman and English law as well as feudalism - all in distinctive ways that similarly suggest an accommodation with underlying forms of social and political organisation.[178]

Of course, whenever we find a fundamental principle running through whole cultures – and especially something as basic as time or space – we may be led astray by its abstract nature into seeing it everywhere. Yet understanding the differing significance of law-in-space helps us to think concretely and comparatively about much of what we take for granted as normal or even normative, thus saving us from the 'cultural solipsism', against which Chris Wickham has warned.[179] More specifically, it enables us to chart different trajectories of social and political change. It may, for instance, explain regional and national variations in the centralization or standardization of government. One example is the reluctant and therefore imperfect adoption of rating for poor relief in Wales and the north-west of England, prior to the late eighteenth century.[180] Ireland and Scotland were even more distinctive in this regard, looking at people's needs rather than their residence and preferring to give voluntarily to known individuals rather than being taxed to provide for

less personalized ways of dealing with want. Differences in social forms and activities can also be better understood by adopting a spatial and legal perspective. The lack of agrarian protest in early modern Scotland compared with England came out of limited tenant rights in land alongside a distinctively fluid or even fuzzy relationship with land as space, rather than a passive or socially harmonious mind-set. The impression of a 'ritually impoverished' (or perhaps just 'relatively impoverished') popular culture in early modern Scotland, sometimes attributed to the smothering influence of Calvinism, is due instead to the comparative scarcity, before as well as after the Reformation, of broadly participative rural public festivities associated with space, like church ales and parish perambulations, which were also rare in the north of England, Wales, and Ireland.[181]

There are broader implications for governance too. In Scotland, attempts to impose officials with a precisely defined area of jurisdiction, like coroners from the fourteenth century, and parish constables and Justices of the Peace from the time of James VI, proved difficult in a society which treated territory as a secondary consideration in enforcing law and order.[182] Lighter than in England, the hand of government in Scotland reached down through a set of social networks and devolved responsibilities. The integration of the north of England into a unitary English state from the twelfth century, and turning Borders into Middle Shires after 1603, involved confronting contrasting regionally related ideas about the connections between law, people, and space. Projects to unite the laws of England and Scotland foundered, not only because of a divergence between more and less Romanized systems, but also thanks to fundamental divergences in conceiving these links. This left post-1707 Britain still a composite monarchy rather than a truly united kingdom.[183] At the same time, different conceptions of law and people in space explain the reasons for, and implications of some of the ways the English organized subordinate polities, such as: why, until Tudor times, Wales was run as 'a collection of colonial annexes'[184]; the enduring tensions between English and indigenous inhabitants of Ireland long after the sixteenth century establishment of a veneer of English law and government; and the distinctive English modes of colonizing the wider world in the seventeenth and eighteenth centuries – and beyond.[185]

Scotland was never an English colony – as its contemporary politicians occasionally remind us. Modern Britain and Ireland wears a coat of Anglicized uniformity that disguises

basic differences in how people related historically to the law, to space, and to each other, in its component parts. The apparent homogeneity dates to the late eighteenth and nineteenth century, when jurisdiction in all parts of Britain and Ireland moved 'from status to locus' and so created more-or-less standardized ideas of territoriality.[186] Yet this happened after centuries of parallel development and sometimes uneasy coexistence with a different 'conception of power as varying bundles of privileges related to different groups and territories'.[187] Arguably, the implications are still being played out in modern British politics and the need to chart how and why and to what extent the convergence occurred is therefore especially pressing. Working out where other countries around the world sit at different points in time, on a continuum between personal and territorial understandings of law, will further create a grid for comparing social and political development, and for understanding not only similarities, but also differences between historic and, ultimately, modern societies and polities.

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[20] H. S. Maine, Ancient Law: its Connection with the Early History of Society, and its Relation to Modern Ideas (1861. 2nd edition, London, 1864), 100; see also 98-9, 101. Friedrich Carl von Savigny, Private International Law: a Treatise on the Conflict of Laws and the Limits of their Operations in Respect of Place and Time, trans. William Guthrie (1869. 2nd edition, Edinburgh, 1880), 58-67.

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[22] Discussion of the ecclesiastical parish and sacred space has been omitted in the interests of brevity and because the topic has already been extensively discussed by Alexandra Walsham. My sense is that exposition of laws, practices, and attitudes towards topics such as burial and church seating would only reinforce the greater importance of territoriality to English life, compared with elsewhere in Britain and Ireland.

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[32] Eamon Duffy, The Stripping of the Altars: Traditional Religion in England c.1400 - c.1580 (London, 1992), 136-9. David Fletcher, 'The Parish Boundary: a Social Phenomenon in Hanoverian England', Rural Hist., xiv (2003). A. D. Harvey, 'Parish Boundary Markers and Perambulations in London', Local Historian, xxxviii (2008), 181, 185. Establishing perambulation routes was also crucial for tithe owners.

[33] Andrew Spicer, '"Disjoynet, dismemberit and disuneited". Church-Building and Re-Drawing Parish Boundaries in Post-Reformation Scotland: a Case Study of Bassendean, Berwickshire', in Chris King and Duncan Sayer (eds.), The Archaeology of Post-Medieval Religion (Woodbridge, 2011).

[34] An Institute of the Laws of Scotland in Civil Rights: With Observations Upon the Agreement or Diversity Between Them and the Laws of England. In Four Books. After the General Method of the Viscount of Stair's Institutions … [by Andrew McDouall Lord Bankton] 3 vols. (Edinburgh, 1751-3), I.X.IX. G. W. S. Barrow, The Acts of Malcolm IV King of Scots 1153-1165 (Edinburgh, 1960), 49-50. Hector L. MacQueen, 'Pleadable Brieves, Pleading and the Development of Scots Law', Law and Hist. Rev., iv (1986), 416–17. David M. Walker, A Legal History of Scotland 7 vols. (Edinburgh, 1988-2004), ii, 700-1. John Hudson, 'Legal Aspects of Scottish Charter Diplomatic in the Twelfth Century: a Comparative Approach', Anglo-Norman Studies, xxv (2003), 129-30. Neville, Land, Law and People, 41-71.

[35] Alexander Grant, 'Lordship and Society in Twelfth-Century Clydesdale', in H. Pryce and J. Watts (eds.), Power and Identity in the Middle Ages: Essays in Memory of Rees Davies (Oxford, 2007), 121. Jonathan Gledhill, 'From Shire to Barony in Scotland: the Case of Eastern Lothian', in Keith J. Stringer and Andrew Jotischky (eds.) Norman Expansion: Connections, Continuities and Contrasts (Farnham, 2013).

[36] Ian H. Adams, 'The Legal Geography of Scotland's Common Lands', Revue de L'Institut de Sociologie, ii (1973), 298, 302-3. Robert A. Dodgshon, Land and Society in Early Scotland (Oxford, 1981), 191-4. D. B. Smith, 'A Banffshire Process of Perambulation 1558: Alexander,

Lord Salton v Sir Walter Ogilvie of Boyne, Knight', in Hector L. MacQueen (ed.), Miscellany Four (Stair Soc., xlix, Edinburgh, 2002). Hudson, 'Scottish Charter Diplomatic', 129-30.

[37] Dodgshon, 'Everyday Structures', 33.

[38] Gwen Kennedy Neville, The Mother Town: Civic Ritual, Symbol, and Experience in the Borders of Scotland (Oxford, 1994), 42-8. Border towns like Peebles had their ridings at Beltane, another pagan festival which marked changing seasons. [various editors] Extracts from the Records of the Burgh of Edinburgh, 1589-1718 9 vols. (Edinburgh, 1927-67), index 'marches'. In the mid-seventeenth century Edinburgh changed to mid- to late May, while late-sixteenth-century Glasgow perambulated at Whitsunday. J. D. Marwick (ed.), Extracts from the Records of the Burgh of Glasgow, A.D. 1573-1642 (Glasgow, 1876), index 'marches'.

[39] James Walter Buchan (ed.), A History of Peeblesshire 3 vols. (Glasgow, 1925-7), ii, 218-88. The laws and privileges of Scottish towns from the twelfth century were modelled on English boroughs (Englishmen were recruited to live and work in them). Scottish burgh laws were more homogeneous than those of English boroughs and the burghs' relationship with the crown more consistent than was the case with baronies.

[40] Lennox Barrow, 'Riding the Franchises', Dublin Historical Record, xxxiii (1980), 135-8. Ronan Foley, Healing waters: Therapeutic Landscapes in Historic and Contemporary Ireland (Farnham, 2010), 29-31. Celeste Ray, 'The Sacred and the Body Politic at Ireland's Holy Wells', International Social Science Jl, lxii (2011). In a personal communication Nicola Whyte has suggested that parish perambulations were also rare in Wales, where people conceptualised space beyond the homestead in quite open terms.

[41] Marjorie Keniston McIntosh, Poor Relief in England, 1350-1600 (Cambridge, 2012).

[42] Roger Schofield, Taxation under the Early Tudors, 1485-1547 (Oxford, 2004), 27-71. Prior to this and after the 1530s (or at least while there was still 'extraordinary' crown revenue) the assessment was on individuals.

[43] Angus Winchester, 'Dividing Lines in a Moorland Landscape: Territorial Boundaries in Upland England', Landscapes, i (2000), 25. Kent was an exception. Beat Kümin, 'The English

Parish in a European Perspective', in Katherine L. French, Gary G. Gibbs and Beat A. Kümin (eds.), The Parish in English life, 1400-1600 (Manchester, 1997).

[44] Winchester, 'Dividing Lines', 26-8, 31. Angus Winchester, Discovering Parish Boundaries (Haverfordwest, 1990), 15-18.

[45] Winchester, 'Dividing Lines', 17, 18, 31. In Cornwall (and indeed across the West Country) tithings became territorialized for judicial, administrative, and fiscal purposes, constituting the main administrative unit until parishes took over from the sixteenth century onwards. P. A. S. Pool, 'The Tithings of Cornwall', Jl Royal Institution of Cornwall, viii (1981). David Harvey, 'The Tithing Framework of West Cornwall: a Proposed Pattern and an Interpretation of Territorial Origins', in Philip Payton (ed.), Cornish Studies: Five (Exeter, 1997). Angus J. L. Winchester, 'Parish, Township and Tithing: Landscapes of Local Administration in England Before the Nineteenth Century', Local Historian, xxvii (1997).

[46] William D. Shannon, 'The Survival of True Intercommoning in Lancashire in the Early-Modern Period', Agric. Hist., lxxxvi (2012).

[47] Dorothy Sylvester, The Rural Landscape of the Welsh Borderland: a Study in Historical Geography (London, 1969), 131, 149-51, 164-89. R. A. Houston, Bride Ales and Penny Weddings: Recreations, Reciprocity, and Regions in Britain from the Sixteenth to the Nineteenth Century (Oxford, 2014), 53, 191-2. Northern English parishes too were often very large and without resident beneficed clergy, making church control of society weak and allowing nonconformity to flourish. Helen M. Jewell, The North-South Divide: the Origins of Northern Consciousness in England (Manchester, 1994), 175, 179. N. J. Higham, A Frontier Landscape: the North West in the Middle Ages (Bollington, 2004), 215-20.

[48] M. A. Jones, 'Cultural Boundaries within the Tudor State: Bishop Rowland Lee and the Welsh Settlement of 1536', Welsh Hist. Rev., xx (2000). Schofield, Taxation, 94.

[49] Alexander Grant, 'Franchises North of the Border: Baronies and Regalities in Medieval Scotland', in Michael Prestwich (ed.), Liberties and Identities in the Medieval British Isles (Woodbridge, 2008), 161. On the early concordance between parish and 'shire' (estate) in the north of England see Barrow, 'Northern English Society', 16-17.

[50] R. A. Houston, Peasant Petitions: Social Relations and Economic Life on Landed Estates, 1600-1850 (Basingstoke, 2014).

[51] Alasdair Ross, 'The Dabhach in Moray: a New Look at an Old Tub', in Alex Woolf (ed.), Landscape and Environment in Dark Age Scotland (St Andrews, 2006), 71.

[52] Winchester, Discovering, 76. Walker, Legal History, ii, 343. W. Croft Dickinson (ed.), The Court Book of the Barony of Carnwath, 1523-1542 (Edinburgh, 1937), xi-cxii. Scottish baronies nevertheless had a geographical as well as legal core: the caput or head place. G. C. H. Paton (ed.), An Introduction to Scottish Legal History (Edinburgh, 1958), 375.

[53] Julian Goodare, 'Parliamentary Taxation in Scotland, 1560-1603', Scot. Hist. Rev., lxviii (1989). Walker, Legal History, iii, 148-50.

[54] Walker, Legal History, iv, 193; v, 206.

[55] Acts of the Parliaments of Scotland, 1617 c. 16.

[56] Snell, Parish and Belonging, 366-73, 440-7, questions how meaningful the distinction was in England.

[57] Sir John Sinclair, The Statistical Account of Scotland. Drawn up from the Communications of the Ministers of the Different Parishes 21 vols. (Edinburgh, 1791-9). The Kirk had supported a mid-seventeenth-century initiative to map Scotland. David Stevenson, 'Cartography and the Kirk: Aspects of the Making of the First Atlas of Scotland', Scot. Studies, xxvi (1982).

[58] Callum G. Brown, 'The Myth of the Established Church of Scotland', in J. Kirk (ed.), The Scottish Churches and the Union Parliament 1707-1999 (Edinburgh, 2001). The phrase comes from John Clare (1793-1864), a quintessentially English 'poet of locality'. Eric Robinson and David Powell (eds.), The Early Poems of John Clare, 1804-22 2 vols. (Oxford, 1989), ii, 742-8.

[59] Whyte, Inhabiting the Landscape, 74-82.

[60] Walter Ullmann, 'Personality and Territoriality in the "Defensor Pacis": the Problem of Political Humanism', in George Garnett (ed.), Law and Jurisdiction in the Middle Ages (London, 1988), 403-4, 407-9.

[61] Walker, Legal History, iv, 193.

[62] Michael F. Graham, 'Equality Before the Kirk? Church Discipline and the Elite in Reformation-Era Scotland', Archiv Für Reformationsgeschichte, lxxxiv (1993).

[63] Snell, Parish and Belonging, 155-7.

[64] Eric Richards, A History of the Highland Clearances: Agrarian Transformation and the Evictions, 1746-1886 (London, 1982), 456-7.

[65] Laura Gowing, 'Ordering the Body: Illegitimacy and Female Authority in Seventeenth-Century England', in Michael J. Braddick and John Walter (eds.), Negotiating Power in Early Modern Society: Order, Hierarchy, and Subordination in Britain and Ireland (Cambridge, 2001), 43-4. Steve Hindle, On the Parish? The Micro-Politics of Poor Relief in Rural England, 1550-1750 (Oxford, 2004), 319, 412.

[66] Rosalind Mitchison, The Old Poor Law in Scotland. The Experience of Poverty, 1574-1845 (Edinburgh, 2000), 101-2, 140-1, 167, 196-7.

[67] Alexander Dunlop, Parochial Law (Edinburgh, 1830), 198, 200. Mitchison, Old Poor Law, 27-8, 43n, 53-5, 98. John McCallum, 'Charity Doesn't Begin at Home: Ecclesiastical Poor Relief Beyond the Parish, 1560-1650', Jl Scot. Hist. Studies, xxxii (2012), 121-2.

[68] An act of 1535, which tried to restrict begging to a home parish, seems to have been a dead letter. William Croft Dickinson, Gordon Donaldson and Isabel A. Milne (eds.), A Source Book of Scottish History 3 vols. (1952-4. 2nd edition, London, 1958-61), iii, 376.

[69] Postles, 'Market Place as Space', 55.

[70] 'An Act for the More Effectual Relief of the Destitute Poor in Ireland', 1 Vict. c. 56. Larry Patriquin, 'Why was there no "Old Poor Law" in Scotland and Ireland?', Jl Peasant Studies, xxxiii (2006), 239.

[71] Smyth, Map-Making, 461. Divisions of a county, Irish baronies were mostly Elizabethan creations. Ibid., 354.

[72] Bruce M. S. Campbell, 'Benchmarking Medieval Economic Development: England, Wales, Scotland, and Ireland, c.1290', Econ. Hist. Rev. 2nd ser., lxi (2008), 923n.

[73] Campbell, 'Benchmarking', 901-2. Smyth, Map-Making, 461. Ireland had about 90 lordships c.1530. Ibid., 5.

[74] A. J. Otway-Ruthven, 'Parochial Development in the Rural Deanery of Skreen', Jl Royal Soc. Antiq. Ireland, xciv (1964), 111-2. Diarmuid Mac Iomhair, 'Post-Reformation Pastors of Fochart', Seanchas Ardmhacha: Jl Armagh Diocesan Hist. Soc., ix (1978), 151-4. P. J. Duffy, 'The Territorial Organisation of Gaelic Landownership and its Transformation in County Monaghan, 1591-1640', Irish Geography, xiv (1981). W. N. Osborough, Studies in Irish Legal History (Dublin, 1999), 130-2. Rowena Dudley, 'The Dublin Parishes and the Poor, 1660-1740', Archivium Hibernicum: Irish Hist. Records, liii (1999). Rural Ireland's parish boundaries may never have been clear prior to the Ordnance Survey Act of 1841.

[75] Kevin Whelan, 'The Catholic Parish, the Catholic Chapel, and Village Development in Ireland', Irish Geography, xvi (1983). Kevin Whelan, 'The Regional Impact of Irish Catholicism, 1700-1850' in William J. Smyth and Kevin Whelan (eds.), Common Ground: Essays on the Historical Geography of Ireland (Cork, 1988). Smyth, Map-Making, 373-4, 376-7, 380-1, 458-9. Many Catholic churches were only built after Emancipation in 1829 and the disestablishment of the Church of Ireland in 1869.

[76] Brooks, Law, Politics and Society, 242-51. Sharpe, 'The People and the Law', 250.

[77] Peter G. B. McNeill and Hector L. MacQueen (eds.), Atlas of Scottish History to 1707 (Edinburgh, 1996), 347-60, 402. Early modern Scotland had 83 royal burghs and 7 ecclesiastical burghs that were not also royal. Ian H. Adams, The Making of Urban Scotland (London, 1978), 278-9.

[78] Late-medieval Norwich and York (with roughly 10,000 inhabitants each) had more than 40 parishes each, London (with less than 50,000 people) more than 100 parishes.

[79] George S. Pryde (ed.), The Court Book of the Burgh of Kirkintilloch, 1658-1694 (Edinburgh, 1963), xlii, xlv. There is a fuller listing of local administrations in Julian Goodare, The Government of Scotland, 1560-1625 (Oxford, 2004), 217. Similar to an English palatinate, a regality was a delegated 'jurisdiction equal to the [royal] justices in criminal cases and to the Sheriff in civil causes'. Crispin H. Agnew, The Baron's Court (Edinburgh, 1994), np, quoting Sir George Mackenzie.

[80] Brooks, Law, Politics and Society, 12.

[81] F. W. Maitland, Domesday Book and Beyond: Three Essays in the Early History of England (Cambridge, 1897), 10. This does not mean that there was no 'geographical dissipation' in Scotland (what Maitland called 'detached portions'), just that there was much less. The Letters of Frederic William Maitland, ed. P. N. R. Zutshi, ii (Selden Soc., suppl. ser., xi, London, 1995), nos. 89 and n, 93. Maitland, Domesday Book, 9. See Snell, Parish and Belonging, 382-7, for discussion of detached portions of English parishes, which were not rationalized until 1894.

[82] Larry R. Poos, 'Population Turnover in Medieval Essex: the Evidence of some Early Fourteenth-Century Tithing Lists', in Lloyd Bonfield, Richard M. Smith and Keith Wrightson (eds.), The World we have Gained: Histories of Population and Social Structure (Oxford, 1986), 15-17.

[83] Hector L. MacQueen, Common Law and Feudal Society in Medieval Scotland (Edinburgh, 1993), 41-2. Brooks, Law, Politics and Society, 244-5.

[84] Myron C. Noonkester, 'The Third British Empire: Transplanting the English Shire to Wales, Scotland, Ireland, and America', Jl British Studies, xxxvi (1997), 257. Pamela Nightingale, 'The Intervention of the Crown and the Effectiveness of the Sheriff in the Execution of Judicial Writs, c.1355-1530', Eng. Hist. Rev., cxxiii (2008).

[85] An Alphabetical Index of all the Towns, Villages, Hamlets, &c. in the County of York … (York, 1792). Keith Stringer, 'States, Liberties and Communities in Medieval Britain and Ireland (c.1100-1400)', in Prestwich (ed.), Liberties and Identities. Lorraine Attreed, 'Urban Identity in Medieval English Towns', Jl Interdisciplinary Hist. xxxii (2002), 572-5. 'Peculiars' were areas exempt from the jurisdiction of the bishop or archdeacon in whose territory they were located. Martin Ingram, Church Courts, Sex and Marriage in England, 1570-1640 (Cambridge, 1987), 36-7, 44-5, 212-13.

[86] Bruce M. S. Campbell, 'The Complexity of Manorial Structure in Medieval Norfolk: a Case Study', Norfolk Archaeol., xxxix (1986), 250-2. E. P. Thompson, Customs in common (Hardmondsworth, 1991), esp. 97-184. Brooks, Law, Politics and Society, 253, 259-61. C. P. Lewis, 'Framing Medieval Chester: the Landscape of Urban Boundaries', in Catherine A. M.

Clarke (ed.), Mapping the Medieval City: Space, Place and Identity in Chester c.1200-1600 (Cardiff, 2011).

[87] Whyte, Inhabiting the Landscape, 90. Christine Carpenter, 'Political and Geographical Space: the Geopolitics of Medieval England', in Kümin (ed.), Political Space, 126-8. G. D. Johnston, 'Boundaries', Amateur Historian, iv (1958). King's Bench also supervised coroners' inquests.

[88] Steve Hindle, The State and Social Change in Early Modern England, 1550-1640 (Basingstoke, 2000), esp. 87-93.

[89] William Alfred Morris, The Frankpledge System (London, 1910). Helen M. Cam, The Hundred and the Hundred Rolls: an Outline of Local Government in Medieval England (London, 1930). D. A. Crowley, 'The Later History of Frankpledge', Bulletin of the Institute of Hist. Research, xlviii (1975).

[90] Church porches themselves acquired a quasi-legal identity. Steve Hindle, 'Destitution, Liminality and Belonging: the Church Porch and the Politics of Settlement in English Rural Communities, c.1590-1660', in Christopher Dyer (ed.), The Self-Contained Village? A Social History of Rural Communities, 1250-1900 (Hatfield, 2007). Dave Postles, 'Micro-Spaces: Church Porches in Pre-Modern England', Jl Hist. Geography, xxxiii (2007).

[91] R. A. Houston, The Coroners of Northern Britain, c.1300-1700 (Basingstoke, 2014).

[92] Richard M. Smith, '"Modernization" and the Corporate Medieval Village Community in England: Some Sceptical Reflections', in Alan R. H. Baker and Derek Gregory (eds.), Explorations in Historical Geography: Interpretative Essays (Cambridge, 1984), 161-71.

[93] Joan Kent, The English Village Constable, 1580-1642: a Social and Administrative History (Oxford, 1986). Jim Sutton, 'Protecting Privilege and Property: Associations for the Prosecution of Felons', Local Historian, xxxiv (2004). Ruth Paley and Elaine A. Reynolds, 'Politicians, Parishes and Police: the Failure of the 1812 Night Watch Bill', Parliamentary Hist., xxviii (2009). The English parish was not a formal unit of criminal jurisdiction and the manor only if it had view of frankpledge.

[94] Walter Ullmann, Principles of Government and Politics in the Middle Ages (New York, 1966), 19-21.

[95] Select Pleas in Manorial and Other Seignorial Courts, ed. F. W. Maitland, i (Selden Soc., ii, London, 1889), xxx, xxxiii. R. Stewart-Brown, The Serjeants of the Peace in Medieval England and Wales (Manchester, 1936), 99-104. N. M. W. Powell, 'Crime and Criminality in Denbighshire during the 1590s: the Evidence of the Records of the Great Sessions', in J. Gwynfor Jones (ed.), Class, Community and Culture in Tudor Wales (Cardiff, 1989). In much of England sheriffs supervised the frankpledge system through their twice yearly tourns, except where view of frankpledge had been 'privatized' as a liberty or franchise, thereby excluding them. The absence of tourns from the north was because the peacekeeping system was different. Morris, Frankpledge, 52-3. William E. Kapelle, The Norman Conquest of the North: the Region and its Transformation, 1000-1135 (London, 1979), 11-12, 50-85.

[96] Carpenter, 'Geopolitics', 126.

[97] Paton (ed.), Introduction to Scottish Legal History, 133, 285-6. T. I. Rae, The Administration of the Scottish Frontier, 1513-1603 (Edinburgh, 1966), 114-32. Jenny Wormald, Lords and Men in Scotland: Bonds of Manrent, 1442-1603 (Edinburgh, 1985). Christopher Schmid, 'Border Lordship and Central Politics: the Local Context of Scottish Power Struggles, 1525-1552', (Guelph Univ. MA thesis, 2007), 40-51. R. F. Hunnisett, The Medieval Coroner (Cambridge, 1961), 27-8. In Tynedale (Northumberland) the system was called 'booking'. Steven G. Ellis, 'Commentary from a British Perspective', in Peter Blickle (ed.), Resistance, Representation, and Community (Oxford, 1997), 57. Henry VII tried something similar in Wales with 'indentures of the Marches' to deal with the alleged perversion of a once-laudable custom called arddel, where lords employed outlaws in their private armies; Henry VIII passed legislation banning this. J. Gwynfor Jones, Early Modern Wales, c.1525-1640 (Basingstoke, 1994), 55, 72-3. In medieval Cheshire the system of 'avowry' seems to have been based on Welsh practices. Stewart-Brown, Serjeants of the peace, 3. Barrow, 'Northern English Society', 16, 22-3.

[98] Thomas N. Bisson, 'Medieval Lordship', Speculum, lxx (1995), 746.

[99] Rae, Scottish Frontier, 116-19. Remissions were conditional on the timely payment of compensation to victims, as well as a fee to the crown. For their use in Ireland see Kenneth

Nicholls, Gaelic and Gaelicised Ireland in the Middle Ages (Dublin, 1972), 187, and Fergus Kelly, A Guide to Early Irish Law (Dublin, 1988), 321.

[100] Ellis, 'British Perspective', 61. John MacNeill, Celtic Ireland (Dublin, 1921), 111. Patterson, 'Brehon Law', 46.

[101] Robert Armstrong and Tadhg Ó hAnnracháin, 'Introduction: Making and Remaking Community in Early Modern Ireland', in Robert Armstrong and Tadhg Ó hAnnracháin (eds.), Community in Early Modern Ireland (Dublin, 2006), 15. Kenneth Nicholls, 'Celtic Contrasts: Ireland and Scotland', Hist. Ireland, vii (1999). Smyth, Map-Making, 61, 80-3, 354, 380-1.

[102] Goodare, Government of Scotland, 204, 251-2. John G. Harrison, '"Policing" the Stirling Area, 1660-1706', Scot. Archives, vii (2001).

[103] Morris, Frankpledge, 43n. Smyth, Map-Making, 155-6. Commentators remarked on reluctance to prosecute or convict even in Victorian times. David Johnson, 'Trial by Jury in Ireland, 1860-1914', Jl Legal Hist., xvii (1996), 277, 280-1.

[104] Smith, '"Modernization"', 171.

[105] John Dalrymple, An Essay Towards a General History of Feudal Property in Great Britain (London, 1759), 236-47. Paton (ed.), Introduction to Scottish Legal History, 430-2.

[106] Dickinson (ed.), Court Book of Carnwath, lxix-lxxiv. Feudal services too were personal, often having no standard relationship with the extent of a landholding. These included 'conveth', a commutation of dues payable by dependants to support their superior while travelling, and 'cain', a payment to a lord acknowledging his authority. Dickinson (ed.), Court Book of Carnwath, lxii-lxiii. Ross, 'The Dabhach in Moray', 71. Dauvit Broun, 'Re-examining cáin in Scotland in the Twelfth and Thirteenth Centuries', in Seán Duffy (ed.), Princes, Prelates and Poets in Medieval Ireland: Essays in Honour of Katharine Simms (Dublin, 2013). Many taxes and dues in the early medieval north of England were levied on individuals or communities. Jolliffe, 'Northumbrian Institutions', 4-8.

[107] Paton (ed.), Introduction to Scottish Legal History, 149, 374.

[108] Susan Reynolds, 'Fiefs and Vassals in Scotland: a View from Outside', Scot. Hist. Rev., lxxxii (2003), 187-8. Aylwin Pillai, 'Land Law', in Mark A. Mulhern (ed.), Scottish Life and

Society: a Compendium of Scottish Ethnology, vol. 13. The Law (Edinburgh, 2012). Feudal structures were gradually dismantled from 1845, but not wholly removed until 2004.

[109] Ullmann, 'Personality', 400, 402.

[110] Clement B. Gunn (ed.), Records of the Baron Court of Stitchill, 1655-1807 (Scot. Hist. Soc., 2nd ser., i, Edinburgh, 1905), xvi, 22-3.

[111] William Maxwell Morison, The Decisions of the Court of Session … in the Form of a Dictionary 42 vols. (Edinburgh, 1801-7), supplement 1, 113. Walker, Legal History of Scotland, iii, 729-30. Goodare, Government of Scotland, 263-5. John Finlay, 'Foreign Litigants before the College of Justice in the Sixteenth Century', in Hector L. MacQueen (ed.), Miscellany Four (Stair Soc., xlix, Edinburgh, 2002). Contrast the legal status of 'Egyptians' in sixteenth-century England. Mark Netzloff, '"Counterfeit Egyptians" and Imagined Borders: Johnson's "The Gypsies Metamorphosed"', Eng. Literary Hist., lxviii (2001), 771.

[112] Fergus Kelly, 'Giolla na Naomh Mac Aodhagáin: a Thirteenth-Century Legal Innovator', in D. S. Greer and N. M. Dawson (eds.), Mysteries and Solutions in Irish Legal History (Dublin, 2001), 8-9. Kelly, Early Irish Law, 125-7, 214-15. Interestingly, the title of English kings changed during the Middle Ages from rex Anglorum to rex Angliae, while that of their Scottish counterparts remained rex Scotorum until 1603. Thereafter rex Britanniae (et cetera) began to be used, though it was not until the reign of Charles II that rex Angliae, Scotiae, Hiberniae (et cetera) became normal. I owe this information to my colleague Roger Mason. Ullmann, 'Personality', 403, describes these as 'reified intitulations'. The relationship between the subject and the sovereign nevertheless remained personal. Brooks, Law, Politics and Society, 133-5.

[113] Patrick Wormald, 'Anglo-Saxon Law and Scots Law', Scot. Hist. Rev., lxxxviii (2009), 193. Paton (ed.), Introduction to Scottish Legal History, 299-301. Walker, Legal History, iv, 695-7; v, 514-15, 721-3. Llinos Beverley Smith, 'A Contribution to the History of galanas in Late-Medieval Wales', Studia Celtica, xliii (2009). Ellis, 'British Perspective', 62. Kelly, 'Thirteenth-Century Legal innovator', 5, 9-10. As Maitland noted, this is not to say that kinship was 'a

corporation created by law, but one which the law must recognise', albeit in a loose way. Maitland, 'Laws of Wales', 209; see also 211-29, on galanas.

[114] Daniel R. Ernst, 'The Moribund Appeal of Death: Compensating Survivors and Controlling Jurors in Early Modern England', Amer. Jl Legal Hist., xxviii (1984). Daniel Klerman, 'Settlement and the Decline of Private Prosecution in thirteenth-century England', Law and Hist. Rev., xix (2001). Private prosecutions were still found in the north of England in the fourteenth and fifteenth centuries. Henry Summerson, 'Peacekeepers and Lawbreakers in Medieval Northumberland, c.1200-c.1500', in Prestwich (ed.), Liberties and Identities, 63.

[115] Hector L. MacQueen, 'Desuetude, the Cessante Maxim and Trial by Combat in Scots Law', Jl Legal Hist., vii (1986), 94. Paton (ed.), Introduction to Scottish Legal History, 302-3. Medieval Wales rejected proof by combat and ordeal in favour of oaths. J. H. Baker, An Introduction to English Legal History (1971. 3rd edition, London, 1990), 36. D. Jenkins, 'Towards the Jury in Medieval Wales', in J. Cairns and G. MacLeod (eds.), The Dearest Birth Right of the People of England: the Jury in the History of the Common Law (Oxford, 2002). The early Irish did use combat and ordeal. Kelly, Early Irish Law, 211-13.

[116] R. R. Davies, 'The Survival of the Bloodfeud in Medieval Wales', History, liv (1969). Jenny Wormald, 'Bloodfeud, Kindred and Government in Early Modern Scotland', Past and Present, no. 87 (May 1980).

[117] Ellis, 'British Perspective', 62. Maitland, 'Laws of Wales', 217. Parts of the Tudor north of England did not operate forfeiture of goods to the lord - the true criterion of felony, whose most basic meaning is breach of fidelity. Ellis, 'British Perspective', 58-9. Bartlett, Making of Europe, 217, 220. Under brehon law jurists were arbitrators in disputes rather than adjudicators before the law, making awards, not judgements. Patterson, 'Brehon Law', 61.

[118] Brooks, Law, Politics and Society, 343-4.

[119] Nicholls, Gaelic and Gaelicised Ireland, 53-7. Actions for assythment, accompanied by 'letters of slains' indemnifying the perpetrator from the wrath of the victim's kin, were still coming before Scottish courts in the late eighteenth century and were still admissible (in theory) until the 1970s. Robert Black, 'A Historical Survey of Delictual Liability in Scotland for

Personal Injuries and Death', Comparative and International Law Jl of Southern Africa, viii (1975).

[120] Baker, Introduction to English Legal History, 36.

[121] David V. Jones, Crime in Nineteenth-Century Wales (Cardiff, 1992), 1-13, 220-22. S. Howard, 'Investigating responses to theft in early modern Wales: communities, thieves and the courts', Continuity & Change xix (2004). Katherine D. Watson, 'Women, Violent Crime and Criminal Justice in Georgian Wales', Continuity & Change, xxviii (2013).

[122] W. J. Jones, 'The Exchequer of Chester in the Last Years of Elizabeth I', in Arthur J. Slavin (ed.), Tudor Men and Institutions: Studies in English Law and Government (Baton Rouge, La., 1972), 150-1.

[123] W. J. Jones, 'Palatine Performance in the Seventeenth Century', in Peter Clark, Alan G. R. Smith and Nicholas Tyacke (eds.), The English Commonwealth 1547-1640: Essays in Politics and Society Presented to Joel Hurstfield (Leicester, 1979). Tim Thornton, 'Fifteenth-Century Durham and the Problem of Provincial Liberties in England and the Wider Territories of the English Crown', Trans. Royal Hist. Soc., 6th ser., xi (2001).

[124] R. B. Outhwaite, The Rise and Fall of the English Ecclesiastical Courts, 1500-1860 (Cambridge, 2006), 7, 38, 97-8. A Privy Seal grant was the best way to deal with property in more than one kingdom after 1603.

[125] Walker, Legal History, iii, 572-9.

[126] Amy Blakeway, Regency in Sixteenth-Century Scotland (Woodbridge, 2015), 198-201.

[127] Sybil M. Jack, 'The "Debatable Lands", Terra Nullius, and Natural Law in the Sixteenth Century', Northern Hist., xli (2004). K. J. Kesselring, '"Berwick is our England": Local and National Identities in an Elizabethan Border Town', in Jones and Woolf (eds.), Local Identities, 94-8, 107. On how Welsh conceptions of shared space could be 'transgressive of the English hegemonic order' see Helen Fulton, 'The Outside Within: Medieval Chester and North Wales as a Social Space', in Clarke (ed.), Mapping the Medieval City, 149. Gerald of Wales commented in the twelfth century on the dismissive (and destructive) Welsh attitudes towards boundaries and markers. The Itinerary through Wales and the Description of Wales by Giraldus Cambrensis (London, 1912), 193 (book ii, ch. 4).

[128] Anthony Giddens, The Nation State and Violence: Volume Two of A Contemporary Critique of Historical Materialism (Cambridge, 1985), 120.

[129] As noted by Maine, Ancient Law, 104. See for example Matthew H. Edney, Mapping an Empire: the Geographical Construction of British India, 1765-1843 (Chicago, 1997). Roger J. P. Kain and Elizabeth Baigent, The Cadastral Map in the Service of the State: a History of Property Mapping (London, 1992).

[130] P. D. A. Harvey, Maps in Tudor England (London, 1993), 103-13. Andrew McRae, God Speed the Plough: the Representation of Agrarian England, 1500-1660 (Cambridge, 1996), 189-94. David Buisseret (ed.), Rural Images: Estate Maps in the Old and New Worlds (Chicago, 1996). Rose Mitchell, 'Maps in Sixteenth-Century English Law Courts', Imago Mundi, lviii (2006). William D. Shannon, 'Adversarial Map-Making in Pre-Reformation Lancashire', Northern Hist., xlvii (2010). Wood, Memory of the People, 189-200.

[131] Nicola Whyte, 'An Archaeology of Natural Places: Trees in the Early Modern Landscape', Huntington Lib. Quart., lxxvi (2013), 513-14.

[132] John Adrian, 'Tudor Centralization and Gentry Visions of Local Order in Lambarde's "Perambulation of Kent"', Eng. Literary Renaissance, xxxvi (2006), 316; see also 328-30. Adrian, English Nationhood, 88-95. Richard Helgerson, 'The Land Speaks: Cartography, Chorography, and Subversion in Renaissance England', Representations, xvi (1986).

[133] Lesley B. Cormack, '"Good Fences Make Good Neighbors". Geography as Self-Definition in Early Modern England', ISIS, lxxxii (1991), 660. Ian C. Cunningham (ed.), The Nation Survey'd: Essays on Late Sixteenth-Century Scotland as Depicted by Timothy Pont (East Linton, 2001). Henri Lefebvre, The Production of Space trans. Donald Nicholson-Smith (Oxford, 1991), 1-9, 16-18, 68-168. Pierre Bourdieu, Outline of a Theory of Practice trans. Richard Nice (Cambridge, 1977), 72. McRae, God Speed the Plough, 231-3. Barbara J. Shapiro, A Culture of Fact: England, 1550-1720 (London, 2000), 63-85.

[134] J. F. Merritt (ed.), Imagining Early Modern London: Perceptions and Portrayals of the City from Stowe to Strype, 1598-1720 (Cambridge, 2001). The later Scottish chorographical tradition emulated that of England. Stan Mendyk, 'Early British Chorography', Sixteenth Century Jl, xvii (1986). Charles W. J. Withers, 'Geography, Science and National Identity in

Early Modern Britain: the Case of Scotland and the Work of Sir Robert Sibbald (1641-1722)', Annals of Science, liii (1996).

[135] Charles W. J. Withers, Geography, Science and National Identity: Scotland since 1520 (Cambridge, 2001), 38-59. Roger A. Mason, 'From Buchanan to Blaeu: the Politics of Scottish Chorography, 1582-1654', in Roger A. Mason and Caroline Erskine (eds.), George Buchanan: Political Thought in Early Modern Britain and Europe (Farnham, 2012). This is also true of the antiquary Walter Macfarlane's mid-eighteenth century work. Sir Arthur Mitchell (ed.), Geographical Collections Relating to Scotland. Made by Walter Macfarlane 3 vols. (Edinburgh, 1906-8).

[136] Walker, Legal History, ii, 637. Grant, 'Franchises', 160.

[137] Sack, Human Territoriality, 138-40. McRae, God Speed the Plough, 196-7.

[138] Smyth, Map-Making, 4-5, 454.

[139] K. W. Nicholls, Land, Law and Society in Sixteenth-Century Ireland (Dublin, 1976). P. J. Duffy, 'Eighteenth-Century Estate Maps', Hist. Ireland, v (1997). Michael J. Braddick, State Formation in Early Modern England, c.1550-1700 (Cambridge, 2000), 388-91. J. H. Andrews, 'How Many Acres? A Cartometric Exercise of 1642', Irish Geography, xxxiv (2001). Bernhard Klein, Maps and the Writing of Space in Early Modern England and Ireland (Basingstoke, 2001).

[140] Smyth, Map-Making, 83. J. H. Andrews, 'The Maps of the Escheated Counties of Ulster, 1609-10', Proceedings of the Royal Irish Academy. Section C, lxxiv (1974).

[141] Whyte, Inhabiting the Landscape, 167. Whyte, 'Archaeology of Natural Places', 501.

[142] Seed, Ceremonies of Possession, 18-19. Thompson, Customs in Common, 117-19. James Horn, Adapting to a New World: English Society in the Seventeenth-Century Chesapeake (London, 1994). Paul Raffield, Images and Cultures of Law in Early Modern England: Justice and Political Power, 1558-1660 (Cambridge, 2004). Lauren Benton, Law and Colonial Cultures: Legal Regimes in World History, 1400-1900 (Cambridge, 2002); A Search for Sovereignty: Law and Geography in European Empires, 1400-1900 (Cambridge, 2010).

[143] S. E. Thorne, 'Livery of Seisin', Law Quart. Rev., lii (1936).

[144] Statutes of Uses and Enrolments (27 Hen. VIII c. 10) changed conveyancing methods. A. W. B. Simpson, An Introduction to the History of the Land Law (1961. 2nd edition, London, 1986), 280.

[145] In the fifteenth and sixteenth centuries the transfer was usually done before a notary public, who recorded evidence of it in a written 'instrument'. Walker, Legal History, i, 364-6. MacQueen, Common Law, 22-4. D. L. Carey Miller, 'Transfer of Ownership', in Kenneth Reid and Reinhard Zimmermann (eds.), A History of Private Law in Scotland. Volume 1: Introduction and Property (Oxford, 2000), 282-9. F. Pollock and R. S. Wright, An Essay on Possession in the Common Law (Oxford, 1888).

[146] The sharp distinction between ownership and possession in Scotland may stem from the influence of the law of the church during the Middle Ages. MacQueen, Common Law, 204-7.

[147] Amanda Vickery, 'An Englishman's Home is his Castle? Thresholds, Boundaries and Privacies in the Eighteenth-Century London House', Past and Present, no. 199 (May 2008), 159-60.

[148] J. Sinclair, General Report of the Agricultural State, and Political Circumstances, of Scotland, 5 vols. (Edinburgh, 1814), i, 92, 189-90. Withers, Geography, Science and National Identity, 145-8. Strictly speaking English leases were an estate, not a tenure. Thus they feature as personal assets in probate inventories.

[149] Brooks, Law, Politics and Society, 354-8.

[150] Richard Burn, The Justice of the Peace, and Parish Officer 4 vols. (1755. London, 1788), ii, 614–15. David Murray, Early Burgh Organization in Scotland 2 vols. (Glasgow, 1924, 1932), ii, 515-17. I. Treiman, 'Escaping the Creditor in the Middle Ages', Law Quart. Rev., xliii (1927). Lorna A. Ewan, 'Debt and Credit in Early Modern Scotland: the Grandtully Estates, 1650-1750', (Edinburgh Univ. Ph.D., 1988), 87-113. Goodare, Government of Scotland, 178. Rebellion against the crown was the foundation for execution of caption in cases of civil debt. A debtor who failed to pay became a rebel when publicly denounced in the king's name. The serious offence of 'hamesucken' (Anglo-Saxon hamsocn or homsoken) involved entry to a person's proper home with the intention to assault. Walker, Legal History, v, 516-17.

[151] Hector L. MacQueen, 'Girth: Society and the Law of Sanctuary in Scotland', in John W. Cairns and Olivia F. Robinson (eds.), Critical Studies in Ancient Law, Comparative Law and Legal History (Oxford, 2001), 343-4, 347-8. Seekers of sanctuary - only available for certain secular crimes in Scotland - did not have to abjure the realm, as they did in England.

[152] Marjorie Platt, The Domestic Life of Scotland in the Eighteenth Century (Edinburgh, 1952), 36. Alexander Fenton and C. Hendry, 'Wooden Tumbler Locks in Scotland and Beyond', Rev. Scot. Culture, i (1984). Stana Nenadic, Lairds and Luxury: the Highland Gentry in Eighteenth Century Scotland (Edinburgh, 2007), 178. Ian Tait, Shetland Vernacular Buildings, 1600-1900 (Lerwick, 2012), 158-64. The keys mentioned in documents and found during archaeological excavations in Scotland are generally to chests rather than doors. Until the end of the seventeenth century, 'essays' or master-pieces set for apprentice locksmiths in Edinburgh were box locks; pass or door locks were the preferred test in the eighteenth century. A. M. Allen, The Locksmith Craft in Early Modern Edinburgh (Edinburgh, 2007), 109-10, 119-20. Contrast the frequency of locking in England. Christopher Dyer, An Age of Transition?: Economy and Society in England in the Later Middle Ages (Oxford, 2005), 56. Flather, Gender, 46-7, 51-2.

[153] A. T. Lucas, 'Wattle and Straw Mat Doors in Ireland', in Arne Furumark et al (eds.), Arctica: Essays Presented to Åke Campbell (Uppsala, 1956).

[154] Trefor Owen, 'The ritual entry to the house in Wales', in Venetia J. Newall (ed.), Folklore Studies in the Twentieth Century. Proceedings of the Centenary Conference of the Folklore Society (Woodbridge, 1980), 340.

[155] Richard Suggett, 'Creating the Architecture of Happiness in Late Medieval Wales', in Dylan Foster Evans, Barry J. Lewis and Ann Parry Owen (eds.), 'Gwalch Cywyddau Gwŷr': Ysgrifau ar Guto'r Glyn a Chymru'r Bymthegfed Ganrif (Aberystwyth 2013), 406. Nicola Whyte, '"With a Sword Drawne in her Hande": Defending the Boundaries of Household Space in Seventeenth-Century Wales', in B. Kane and F. Williamson (eds.), Women, Agency and the Law, 1300-1700 (London, 2013). Gary J. West, 'Custom', in Susan Storrier (ed.), Scottish Life and Society: a Compendium of Scottish Ethnology, vol. 6. Scottish Domestic Life (Edinburgh, 2006), 565, 568-9.

[156] A. K. R. Kiralfy, The Action on the Case: an Historical Survey … (London, 1951). These phrases date from the time of Henry III and were used to remove trespass from local to royal courts. Donald W. Sutherland, The Assize of Novel Disseisin (Oxford, 1973). S. F. C. Milsom, Studies in the History of the Common Law (London, 1985), 91-103. J. G. Bellamy, Bastard Feudalism and the Law (London, 1989), 1-8. The word trespass was little used in early modern Scotland, except in the sense of a sin, and was neither defined in statute nor by courts. Certain types of trespass could be made criminal offences by statute (e.g. The Trespass (Scotland) Act, 1865, 28 & 29 Vict. c. 56.) and trespass with criminal intent could be prosecuted.

[157] Whyte, 'Household Space', 154.

[158] A. R. B. Haldane, The Drove Roads of Scotland (London, 1952), 208-14. Medieval charters sometimes granted livestock owners the right to overnight on someone else's land. Dickinson, Donaldson and Milne (eds.), Source Book, i, 115.

[159] W. G. Hoskins, 'The Rediscovery of England', in W. G. Hoskins, Provincial England: Essays in Social and Economic History (London, 1963). Bushaway, By Rite, 81-8. Matthew Johnson, An Archaeology of Capitalism (Oxford, 1996), 70-5, 93-4. Nicholas Blomley, 'Making Private Property: Enclosure, Common Right and the Work of Hedges', Rural Hist., xviii (2007). Briony McDonagh, 'Making and Breaking Property: Negotiating Enclosure and Common Rights in Sixteenth-Century England', Hist. Workshop Jl, lxxvi (2013). Wood, Memory of the People, 236-46.

[160] Robert A. Dodgshon, 'The Scottish Farming Township as a Metaphor', in Leah Leneman (ed.), Perspectives in Scottish Social History: Essays in Honour of Rosalind Mitchison (Aberdeen, 1988), 72, 78. Hedges (and field walls) were unusual in Scotland prior to the mid-eighteenth century, except for decorative purposes, though there were other means of delineating holdings, such as 'bauks' or 'baulks' (strips of unploughed land) and tracks or 'loans' for herding livestock might also be marked off by dykes. Alexander Fenton and Roger Leitch, 'Dykes and Enclosures', in Alexander Fenton and Kenneth Veitch (eds.), Scottish Life and Society: a Compendium of Scottish Ethnology, vol. 2. Farming and the Land (Edinburgh, 2011). Barrow, 'Northern English Society', 3, notes a similar absence in medieval

Cumberland. Hedges and other boundary markers were rare in Ireland too and, even where they existed, 'English logic' did not apply to them. E. Estyn Evans, The Personality of Ireland: Habitat, Heritage and History (London, 1973), 43.

[161] I. M. L. Robertson, 'The Head-Dyke: a Fundamental Line in Scottish Geography', Scot. Geographical Magazine, lxv (1949). James Robertson, General View of the Agriculture in the County of Perth (London, 1794), 107-8.

[162] John W. Leopold, 'The Levellers' Revolt in Galloway in 1724', Jl Scot. Labour Hist. Soc., xiv (1980), describes unusual, short-lived, small-scale attacks on stone walls in part of south-west Scotland. Adams, 'Legal Geography', 264-5. Kenneth J. Logue, Popular Disturbances in Scotland, 1780-1815 (Edinburgh, 1979), 54-74. Christopher A. Whatley, 'How Tame were the Scottish Lowlanders during the Eighteenth Century?', in T. M. Devine (ed.), Conflict and Stability in Scottish Society 1700-1850 (Edinburgh, 1990). Some eighteenth- and nineteenth-century protests about land-use were by Lowland townspeople who wanted access to the countryside. T. C. Smout, Nature Contested. Environmental History in Scotland and Northern England since 1600 (Edinburgh, 2000), 152-3.

[163] Robert A. Dodgshon, From Chiefs to Landlords: Social and Economic Change in the Western Highlands (Edinburgh, 1998), 45. T. C. Smout, Exploring Environmental History: Selected Essays (Edinburgh, 2009), 21-51. Morris, 'New Spaces', 229-31.

[164] Pawlisch, Sir John Davies, 11, 57-9. Davies was particularly critical of gavelkind and tanistry, both clan-focused. Patterson, 'Brehon Law', 46. Brooks, Law, Politics and Society, 129-30. John Morrissey, 'Contours of Colonialism: Gaelic Ireland and the Early Colonial Subject', Irish Geography, xxxvii (2004). For caveats about the purity of individual property rights in England see Stephen D. White and Richard T. Vann, 'The Invention of English Individualism: Alan Macfarlane and the Modernization of Pre-Modern England', Social Hist., viii (1983). Of course, Maitland saw a shift not from communalism to individualism, but 'from the vague to the definite'. F. W. Maitland, 'The Survival of Archaic Communities', in Collected Papers, ed. Fisher, ii, 363.

[165] Patterson, 'Brehon Law', 63. William H. A. Williams, Tourism, Landscape, and the Irish Character: British Travel Writers in Pre-Famine Ireland (Madison, Wis., 2008), 127-46, 223n37.

[166] Houston, Peasant Petitions, 120-34, 280-2.

[167] Edmund Spenser, A View of the Present State of Ireland ed. W. L. Renwick (Oxford, 1970), 5. 'Royal Commission on the Working of the Landlord and Tenant (Ireland) Act 1870' (1881), quoted in Clive Dewey, 'Celtic Agrarian Legislation and the Celtic Revival: Historicist Implications of Gladstone's Irish and Scottish Land Acts, 1870-1886', Past and Present, no. 64 (Aug. 1974), 62. The Welsh equivalent of duthchas was hiraeth, the Irish ionndrain.

[168] John N. Gray, At Home in the Hills: Sense of Place in the Scottish Borders (Oxford, 2000).

[169] Whyte, Inhabiting the Landscape, 122. K. D. M. Snell, 'Belonging and Community: Understandings of "Home" and "Friends" among the English Poor, 1750-1850', Econ. Hist. Rev., 2nd ser., lxv (2012).

[170] Walsham, Reformation of the Landscape, 6.

[171] Christopher Lewis, Particular Places: an Introduction to English Local History (London, 1989).

[172] Dodgshon, 'Everyday Structures', 44. Smout, Exploring Environmental History, 153-67.

[173] Morris, 'New Spaces', 225.

[174] Dodgshon, 'Scottish Farming Township', 72-3. McRae, God Speed the Plough, 180-9.

[175] Dodgshon, 'Scottish Farming Township', 73.

[176] Osborough, Studies in Irish Legal History, 17.

[177] Patrick Wormald, 'Quadripartitus', in George Garnett and John Hudson (eds.), Law and Government in Medieval England and Normandy: Essays in Honour of Sir James Holt (Cambridge, 1994), 147. Wormald may have had in mind his 'hero' Maitland – or perhaps Walter Ullmann, who noted that in parts of medieval Europe 'territorial boundaries had become boundaries of the law … The territory had acquired juristic personality. … [D]omicile provided the link between the res – the territory – and the persona'. Ullmann, 'Personality',

401-2. 'Obituary: Patrick Wormald', The Telegraph (27 October 2004). Elden, Birth of Territory, ch. 7-9, locates the change in the medieval rediscovery of Roman law, but for other suggestions see Guthrie's note to von Savigny, Private International Law, 63-4.

[178] W. David H. Sellar, 'The Common Law of Scotland and the Common Law of England', in R. R. Davies (ed.), The British Isles, 1100–1500: Comparisons, Contrasts and Connections (Edinburgh, 1988).

[179] Chris Wickham, 'Problems of Comparing Rural Societies in Early Medieval Western Europe', Trans. Royal Hist. Soc., 6th ser., ii (1992), 223.

[180] Houston, Bride Ales, 187-92. These were the areas most opposed to poor law reform in the 1830s.

[181] R. A. Houston and I. D. Whyte, 'Introduction: Scottish Society in Perspective', in R. A. Houston and I. D. Whyte (eds.), Scottish Society, 1500-1800 (Cambridge, 1989), 34-5. Christopher A. Whatley, 'Order and disorder', in Foyster and Whatley (eds.), History of Everyday Life, 198. Todd, Culture of Protestantism. Houston, Bride Ales, 21-56.

[182] Ann E. Whetstone, Scottish County Government in the Eighteenth and Nineteenth Centuries (Edinburgh, 1981), 27-60. R. S. Tompson, 'The Justices of the Peace and the United Kingdom in the Age of Reform', Jl Legal Hist., vii (1986).

[183] J. H. Elliott, 'A Europe of Composite Monarchies', Past and Present, no. 137 (Nov. 1992).

[184] R. R. Davies, Conquest, Coexistence and Change: Wales 1063-1415 (Oxford, 1987), 462.

[185] Shaunnagh Dorsett, 'Mapping Territories', in Shaun McVeigh (ed.), Jurisprudence of Jurisdiction (Abingdon, 2007). Hamar Foster, Benjamin L. Berger and A. R. Buck (eds.), The Grand Experiment: Law and Legal Culture in British Settler Societies (Vancouver, 2008). James Barr, A Line in the Sand: Britain, France and the Struggle that Shaped the Middle East (London, 2012).

[186] Ford, 'Law's Territory', 845. In an analysis that does no justice to the place of law in 'traditional' societies, R. J. Morris describes a shift from 'anthropological' space 'based upon practice, memory, prescription, tradition' and belonging, to 'the rational rule-based

functionality of the modern' which was 'based upon law, the market, and the utilities of production, consumption, order and improvement'. Morris, 'New Spaces', 226, 251.

[187] John Breuilly, 'Sovereignty and Boundaries: Modern State Formation and National Identity in Germany', in Mary Fulbrook (ed.), National Histories and European History (London, 1993), 108.